

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 789
FINAL READING

Introduced by Schrock, 38

Read first time January 20, 1999

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Environmental Protection Act; to amend
2 sections 81-1507 and 81-1508.02, Revised Statutes
3 Supplement, 1998; to change provisions relating to
4 violator hearings and fines; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-1507, Revised Statutes Supplement,
2 1998, is amended to read:

3 81-1507. (1) Whenever the director has reason to believe
4 that a violation of any provision of the Environmental Protection
5 Act, the Integrated Solid Waste Management Act, the Livestock Waste
6 Management Act, a rule or regulation pursuant to such acts, or any
7 order of the department has occurred, he or she may cause a written
8 complaint to be served upon the alleged violator or violators or he
9 or she may bring a criminal or civil action under section
10 81-1508.01 or 81-1508.02. The complaint shall specify the
11 provision of the act, rule or regulation, or order alleged to be
12 violated and the facts alleged to constitute a violation thereof
13 and shall order that necessary corrective action be taken within a
14 reasonable time to be prescribed in such order. Any such order
15 shall become final unless each person named therein requests in
16 writing a hearing before the director no later than thirty days
17 after the date such order is served. In lieu of such order, the
18 director may require that the alleged violator appear before the
19 director at a time and place specified in the notice and answer the
20 charges complained of. The notice shall be delivered to the
21 alleged violator or violators in accordance with the provisions of
22 subsection (5) of this section not less than thirty days before the
23 time set for the hearing.

24 (2) The director shall afford an opportunity for a fair
25 hearing, in accordance with the provisions of the Environmental
26 Protection Act, the Integrated Solid Waste Management Act, or the
27 Livestock Waste Management Act, to the alleged violator or
28 violators at the time and place specified in the notice or any

1 modification thereof. On the basis of the evidence produced at the
2 hearing, the director or hearing officer shall make findings of
3 fact and conclusions of law and enter such order as in his or her
4 opinion will best further the purposes of the acts and shall give
5 written notice of such order to the alleged violator and to such
6 other persons who appear at the hearing and make written request
7 for notice of the order. If the hearing is held before any person
8 other than the director, such person shall transmit a record of the
9 hearing together with findings of fact and conclusions of law to
10 the director. The director, prior to entering his or her order on
11 the basis of such record, shall provide opportunity to the parties
12 to submit for his or her consideration exceptions to the findings
13 or conclusions and supporting reasons for such exceptions. The
14 order of the director shall become final and binding on all parties
15 unless appealed to the courts as provided in section 81-1509 within
16 thirty days after notice has been sent to the parties.

17 (3) Any person who is denied a permit by the director or
18 who has such permit revoked or modified shall be afforded an
19 opportunity for a fair hearing as provided in subsection (2) of
20 this section in connection therewith upon written application to
21 the director within thirty days after receipt of notice from the
22 director of such denial, revocation, or modification. On the basis
23 of such hearing the director shall affirm, modify, or revoke his or
24 her previous determination.

25 (4) Whenever the director finds that an emergency exists
26 requiring immediate action to protect the public health and
27 welfare, the director may, without notice or hearing, issue an
28 order reciting the existence of such an emergency and requiring

1 that such action be taken as the director deems necessary to meet
2 the emergency. Notwithstanding the provisions of subsection (2) of
3 this section, such order shall be effective immediately. Any
4 person to whom such order is directed shall comply therewith
5 immediately but on application to the director shall be afforded a
6 hearing as soon as possible and not later than ten days after such
7 application by such affected person. On the basis of such hearing,
8 the director shall continue such order in effect, revoke it, or
9 modify it.

10 (5) Except as otherwise expressly provided, any notice,
11 order, or other instrument issued by or under authority of the
12 director shall be served on any person affected thereby in a manner
13 provided for service of a summons in a civil action. Proof of
14 service shall be filed in the office of the department.

15 Every certificate or affidavit of service made and filed
16 as provided in this section shall be prima facie evidence of the
17 facts therein stated, and a certified copy thereof shall have like
18 force and effect.

19 (6) The hearings provided for in this section may be
20 conducted by the director or by any member of the department acting
21 in his or her behalf, or the director may designate hearing
22 officers who shall have the power and authority to conduct such
23 hearings in the name of the director at any time and place. A
24 verbatim record of the proceedings of such hearings shall be taken
25 and filed with the director, together with findings of fact and
26 conclusions of law made by the director or hearing officer.
27 Witnesses who are subpoenaed shall receive the same fees as in
28 civil actions in the district court and mileage as provided in

1 section 81-1176. In case of contumacy or refusal to obey a notice
2 of hearing or subpoena issued under the provisions of this section,
3 the district court shall have jurisdiction, upon application of the
4 director, to issue an order requiring such person to appear and
5 testify or produce evidence as the case may require and any failure
6 to obey such order of the court may be punished by such court as
7 contempt thereof.

8 If requested to do so by any party concerned with such
9 hearing, the full stenographic notes, or tapes of an electronic
10 transcribing device, of the testimony presented at such hearing
11 shall be taken and filed. The stenographer shall, upon the payment
12 of the stenographer's fee allowed by the court therefor, furnish a
13 certified transcript of the whole or any part of the stenographer's
14 notes to any party to the action requiring and requesting the same.

15 Sec. 2. Section 81-1508.02, Revised Statutes Supplement,
16 1998, is amended to read:

17 81-1508.02. (1) It shall be unlawful for any person:

18 (a) To refuse the right of entry and inspection to any
19 authorized representative of the department when the representative
20 is acting under the provisions of a permit issued by the
21 department;

22 (b) To violate any air, water, or land quality standards,
23 any emission or effluent standards or limitations, any permit or
24 license condition or limitation, any order of the director, or any
25 monitoring, reporting, or record-keeping requirements contained in
26 or issued or entered into pursuant to the Environmental Protection
27 Act, the Integrated Solid Waste Management Act, or the Livestock
28 Waste Management Act or the rules or regulations adopted and

1 promulgated pursuant to such acts;

2 (c) To make any false statement, representation, or
3 certification in any application, label, record, report, plan, or
4 other document required to be filed or maintained by such acts,
5 rules, or regulations;

6 (d) To falsify, tamper with, or render inaccurate any
7 monitoring device or method used or required for compliance with a
8 permit or license or such acts, rules, or regulations; or

9 (e) To violate any other provision of or fail to perform
10 any other duty imposed by such acts, rules, or regulations.

11 (2) Each violation of this section or of section 81-1506
12 shall subject a person to a civil penalty of no more than ten
13 thousand dollars per day. In case of a continuing violation, each
14 day shall constitute a separate offense. ~~The amount of the penalty~~
15 ~~shall be based on~~ In assessing the amount of the fine, the court
16 shall consider the degree and extent of the violation, the size of
17 the operation, and any economic benefit derived from noncompliance.

18 Sec. 3. Original sections 81-1507 and 81-1508.02,
19 Revised Statutes Supplement, 1998, are repealed.